



Dublin, 9<sup>th</sup> of February 2012

**Subject: EU Regulation No 404/2011 - Rules on marking of fixed gears and beam trawl**

Dear Director General Evans:

On the 30th April 2011 the EU Regulation No. 404/2011 was published whereby detailed rules for implementing the Control Regulation (EC) No. 1224/2009 were established. Articles 8 to 17 of the Regulation 404/2011 provide the legal basis for the identification and marking of fishing gears. It is our understanding that these legislative provisions have repealed Regulation (EC) 356/2005 and that they have entered into force on the 1<sup>st</sup> January 2012.

Since its creation, the NWWRAC has been actively involved in and advocated the need to amend Regulation (EC) 356/2005 in order to improve the safety of crew and achieve a safer and more effective marking system than the existing one<sup>1</sup>. In this regard, the NWWRAC would like to express its disappointment for not being formally consulted in the preparation of EU Regulation 404/2011 nor informed of the proposed amendments, regardless of the specific request made in our letter dated the 11<sup>th</sup> September 2009 (section c)<sup>2</sup>.

Furthermore, the NWWRAC notes, with some concern, that most of the recommendations on technical amendments on gear marking included in two evaluation reports carried out by BIM were not taken into account. A first report (Robson et al. 2006) on the marking of passive gear had drawn attention to a number of problems in relation to the marking system as stated in the Regulation 356/2005. Some examples of the issues identified in this report (on page 9) are:

- The considerable costs linked to the purchase of necessary equipment for gear marking;
- The size and weight of the marker buoys increases the handling risks for the crew and the stability of the vessels;
- The regulation does not improve the navigation conditions for other vessels;
- The regulation might lead to gear losses.

<sup>1</sup> Letters dated 7th March 2006, 15th January 2007 and 11th September 2009, as well as the reply from the Commission are available in the publication site of the NWWRAC webpage:

[http://www.nwwrac.org/Publications/Publications\\_ENG/Navigation.php?cats=0&language=English](http://www.nwwrac.org/Publications/Publications_ENG/Navigation.php?cats=0&language=English)

<sup>2</sup> Direct link:

[http://www.nwwrac.org/admin/publication/upload/NWWRAC%20 Letter Review Gear Marking Regulation 110909\\_EN.pdf](http://www.nwwrac.org/admin/publication/upload/NWWRAC%20Letter%20Review%20Gear%20Marking%20Regulation%20110909_EN.pdf)



As a result of the BIM technical report in 2006, the European Commission funded a subsequent study to compare existing international practices in gear marking. This study was awarded to BIM and the results published in 2009. It is to be noted that the conclusions of the 2009 report were widely supported by the NWWRAC, which actively participated in the process of consultation with the industry by facilitating the cooperation of a number of concerned representatives of fleets operating with passive gear (gillnets, entangling nets and driftnets) and moving gears (beam trawls).

Having made a brief analysis of EU Regulation 404/2011, the NWWRAC is of the opinion that it includes a number of positive and negative elements as well as aspects which require to be clarified as to the interpretation.

The NWWRAC's opinion is detailed below and supported by a diagram which is attached as Annex I.

#### 1. Positive elements

- It seems that the use of radar reflectors is not required;
- Distance of intermediary buoys is 5 nautical miles (nm) in contrast to 1 nm as established in Regulation 356/2005.

#### 2. Negative elements:

- The difference in configuration between the east and the west markers buoy types is maintained.

In this sense, article 16.1 sets the rules for western sector buoys, which implies carrying twice the number of flags, lights and luminous bands of that required for the eastern sector buoys (section 1.b)

The extra length and weight of the western buoys pose a serious and severe risk for crew safety given the major difficulties operating the buoys and the risk of entanglements, falls and other accidents as a result of handling these buoys. This is especially the case during shooting and hauling operations of the buoys.



The NWWRAC calls for the revision of the aforementioned article and that the same measures and conditions required for Eastern sector buoys are established, i.e. 1 flag, 1 light, 1 luminous brand. Differentiation between buoys could be achieved much more efficiently by using flags with transverse lines, 2 coloured flags, etc.

- The scope of the rules on gear marking has been extended to include pot and trap fisheries in EU Waters outside 12 nautical miles and no consultation has been made to the RACs. The inclusion of pots and traps marks a considerable deviation from EU Regulation 356/2005 as this type of gear and the vessels involved in the fishery are not comparable with the static gear originally described.

With the exception of the need to label all gear (including vessel name and vessel ID details), the NWWRAC would contend that pots and traps should be removed completely from EU Regulation 404/2011 (Article 2 Definitions (6) (c)).

If it is not possible to make this correction, we would suggest as an alternative that pots and traps continue to be marked with Polyform buoys which can conform to any requirements regarding identity but do not pose a hazard to fishermen, navigation or other operators. A diagram with the proposed marking is included in Annex II.

- The intermediary buoys should not have to use a mast or pole. They should simply be topped by a light.

### 3. Aspects requiring clarification:

- The top sign(s) – Article 15.5 reads “each end marker buoy **may** include a top sign on the top of the buoy with one or two striped luminous bands which shall be neither red nor green and shall be at least 6 centimetres broad.”

This paragraph could be interpreted as if the top sign (i.e. markers on the top of the buoys) was optional since the word “shall” is used instead of “may” for all the other marking requirements.



The NWWRAC reiterates its concerns on the effects that the negative aspects described might have on crew safety. Unfortunately, following the implementation of Regulation 356/2005 we have witnessed several accidents at sea, some of them ending in deaths, directly related to the shooting and hauling of buoys. An example in this context, is the case of two Indonesian deckhands that fell into the sea and died during the shooting of buoys from two different longliners from Celeiro, Spain whilst fishing in Grand Sole. A report of these incidents was published in the newspaper "La Voz de Galicia" on the 26<sup>th</sup> of November 2008.

It is, therefore, vital to consult with fishermen, to find an efficient and agreed system in respect to passive gear marking and communication between sea users, which also satisfies the intent of the regulation, whilst being useful and safe for crew members and avoiding any unnecessary financial hardship.

**In summary, the North Western Waters RAC requests a detailed explanation from the Commission on the following points:**

- **The reason for the lack of consultation with the North Western Waters RAC in the process of preparation and drafting of the Regulation;**
- **The reasons why the recommendations included in BIM's technical studies were adopted and/or excluded;**
- **Clarification of the technical aspects of EU Regulation 404/2011 (Point 3 of this document).**

We trust that the views expressed in this letter are clearly stated and that they will receive due consideration by your services.

Yours faithfully,

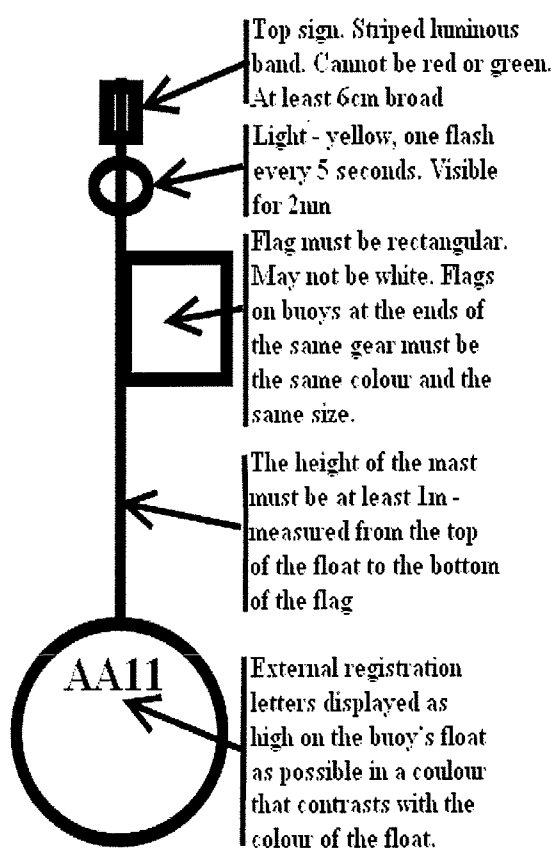
Bertie Armstrong  
NWWRAC Chairman



## ANNEX I. GEAR MARKING SKETCH

For vessels outside 12nm

### Eastern sector buoy



Note: this sketch and the accompanying text is for illustrative purposes and is not a definitive interpretation of EU 404 of 2011. Please refer to text of the regulation at all times.

### Western sector buoy

Top sign - 2 luminous bands. Each 6cm broad with a space between. May not be green or red

Light - 2 yellow lights giving one flash every 5 seconds and visible for 2nm.

Flag - 2 flags. May not be white and must be the same size and colour as the flag on the corresponding eastern sector buoy. Flags must be spaced 20cm apart.

The height of the mast must be at least 1m - measured from the top of the float to the bottom of the first flag.

The external registration letters and numbers must be displayed as high as possible on the float of the buoy.

### Intermediate buoys

Intermediate buoys should only be used if the gear measures more than 5nm (refer to text of regulation for specification).

### Labels

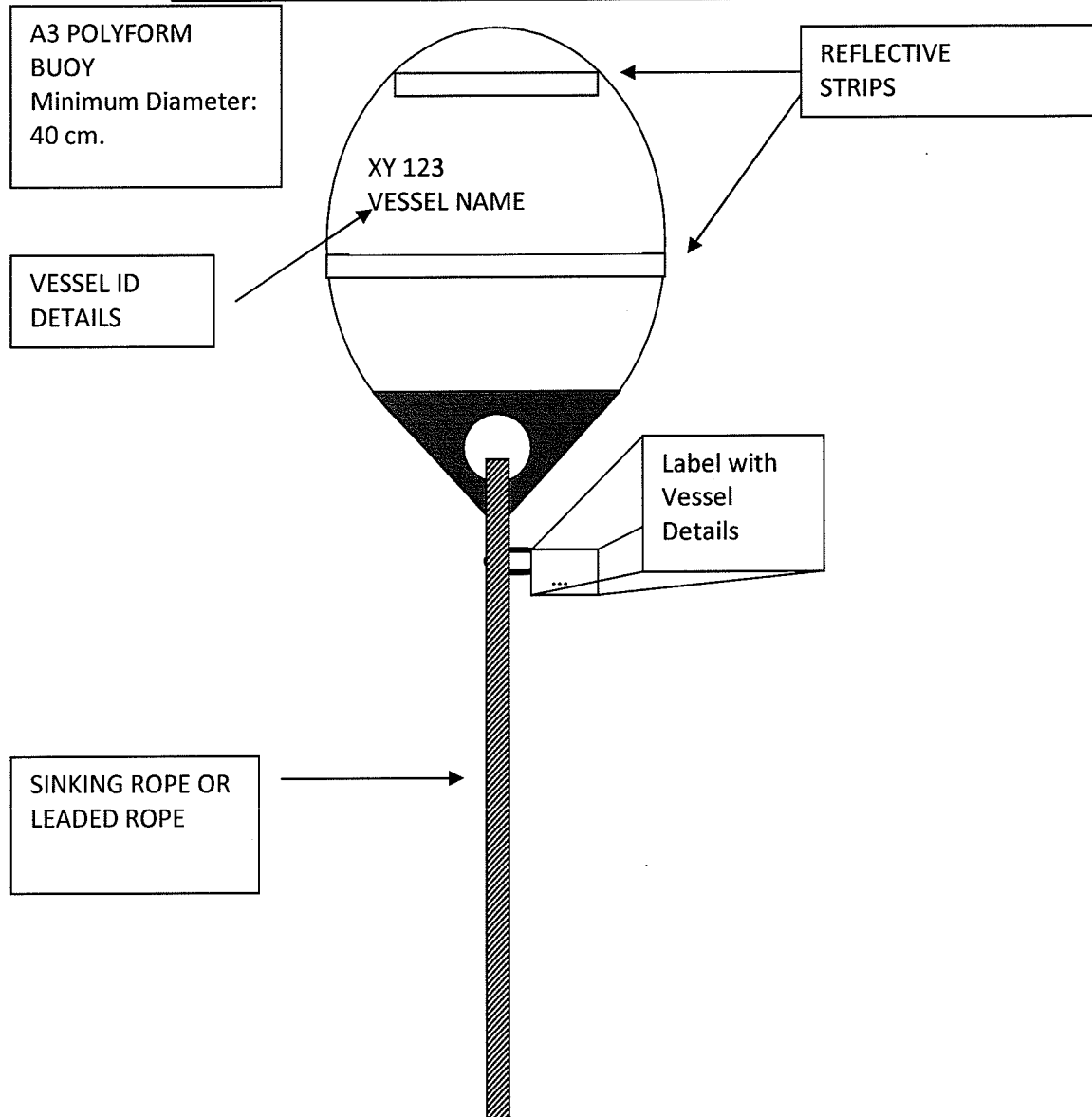
Labels must be of durable material and measure 75mm long and 65mm broad and be fixed to:

the upper first row of meshes on nets  
the ground rope of pots and traps

Labels need to be spaced at intervals of 1nm.



## ANNEX 2. ALTERNATIVE MARKER FOR POTS AND TRAPS



### PROPOSED MARKER BUOY FOR POTS AND TRAPS